

# TENNESSEE REGULATORY AUTHORITY

Sara Kyle, Chairman  
Deborah Taylor Tate, Director  
Pat Miller, Director  
Ron Jones, Director



RECEIVED

460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

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## MEMORANDUM

TN REGULATORY AUTHORITY  
DOCKET ROOM

TO: Chairman Sara Kyle  
Director Pat Miller  
Director Ron Jones

FROM: Eddie Roberson, Chief, Consumer Services Division  
Ed Mimms, Manager, Do Not Call Program

Lynn Questell, Counsel

DATE: October 24, 2002

SUBJECT: Settlement with Scotts Lawn Service  
Docket No. 02-00326

Attached is a Settlement Agreement between the Consumer Services Division ("Staff") and Scotts Lawn Service (referred hereafter to as "Scotts") for violations of the Tennessee Do-Not-Call Telephone Sales Solicitation statute, TCA §65-4-401 *et seq.* Scotts initially registered with the Tennessee Regulatory Authority ("Authority") as a solicitor on March 13, 2001. That registration expired on June 30, 2001. Scotts renewed its registration on October 11, 2002.

Five (5) separate complaints have been registered against Scotts with the Authority alleging that the company violated TCA §65-4-401 *et seq.* This Settlement requires Scotts to make a payment of \$9,000 to the Authority along with assurances that it will fully comply with applicable state law. The terms of this Settlement require Scotts to pay \$2,000 to the Authority within thirty (30) days of Authority ratification of the Settlement. The remaining balance shall be paid in seven (7) installments of \$1,000 on the first business day of each succeeding month. A representative for Scotts will be available telephonically at the November 4, 2002 Conference to answer any question you may have.

Considering all relevant facts, the Staff believes the terms of this Settlement are fair and reasonable and should have the result of no additional telemarketing complaints being filed against Scotts.

Staff submits the attached Settlement Agreement for your deliberation at the November 4, 2002 Authority Conference.

cc: Director Deborah Taylor Tate  
Richard Collier, General Counsel  
Stephen E. Schmidt, counsel for Scotts Lawn Care

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October 22, 2002

Lynn Questell, Esquire  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

Re: Scotts Lawn Service  
File T0200223  
TRA Docket No. 02-00326

Dear Lynn:

Enclosed are two execution counterparts of the SETTLEMENT AGREEMENT relating to the alleged Do Not Call violations. Please let me know at your earliest convenience when the approval hearing for this settlement will be held so that I can arrange my schedule accordingly. I appreciate your cooperation in this regard.

Very truly yours,

KENNERLY, MONTGOMERY & FINLEY, P.C.

By



Steven E. Schmidt

SES:jb

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Enclosure

cc: Mr. Tom Hall

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

IN RE:	)		
	)		
ALLEGED VIOLATIONS OF TENN.	)		
CODE ANN. §65-4-401 <i>et seq.</i> , DO-NOT-	)		
CALL SALES SOLICITATION LAW,	)	DOCKET NO.	02-00326
AND RULES OF TENNESSEE	)		
REGULATORY AUTHORITY, CHAPTER	)		
1220-4-11, BY:	)	DO-NOT-CALL	T02-00074
	)	PROGRAM	T02-00095
KNOXVILLE LAWN CARE, INC. A/K/A	)	FILE NUMBERS	T02-00100
SCOTTS LAWN SERVICE	)		T02-00223
	)		

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**SETTLEMENT AGREEMENT**

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This Settlement Agreement has been entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA") and Knoxville Lawn Care, Inc. a/k/a Scotts Lawn Service ("Scotts Lawn Service" or the "Company"). This Settlement Agreement pertains to five (5) complaints received by the CSD alleging that Scotts Lawn Service violated the Tennessee Do-Not-Call Telephone Sales Solicitation law, TENN. CODE ANN. § 65-4-401 *et seq.*, and its concomitant regulations, TENN. COMP. R. & REGS. 1220-4-11.07. This Settlement Agreement is subject to the approval of the Directors of the TRA.

TENN. CODE ANN. § 65-4-404, and TENN. COMP. R. & REGS. 1220-4-11.07(1), prohibit persons from knowingly making or causing to be made telephone sales solicitation calls to residential subscribers in this state who have given timely and proper notice to the TRA of their objection to receiving telephone solicitations. Tenn. Code

Ann. § 65-4- 405(d) requires that persons or entities desiring to make telephone solicitations to residential subscribers shall pay an annual registration fee and obtain the Do-Not-Call Register prior to conducting such telephone solicitations.

Scotts Lawn Service initially registered in the Do-Not Call Program on March 13, 2001. That registration expired on June 30, 2001. Scotts Lawn Service renewed its registration on February 7, 2002. After its registration expired on June 30, 2002, Scotts Lawn Service renewed its registration in the Do-Not Call Program on October 11, 2002.

The CSD's investigation in this docket commenced after it received a complaint on February 11, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Scotts Lawn Service on February 2, 2002. The CSD provided Scotts Lawn Service with notice of this complaint on February 13, 2002. The CSD received a second complaint on February 21, 2002, alleging that a person acting on behalf of Scotts Lawn Service made an unlawful telephone solicitation to a person properly listed on the Do-Not-Call register on January 29, 2002. The CSD provided Scotts Lawn Service with notice of this complaint on February 28, 2002. The CSD received the third and fourth complaints on February 26, 2002. The complainant, a person properly listed on the Do-Not-Call register, alleged that a person acting on behalf of Knoxville Lawn Service made two unlawful telephone solicitations, on February 1 and 4, 2002. The CSD provided Knoxville Lawn Service with notice of the complaints on February 27, 2002 and March 11, 2002, respectively. The CSD received the fifth complaint on April 12, 2002. The complainant, a person properly listed on the Do-Not-Call register, alleged that a person acting on behalf of

Scotts Lawn Service made an unlawful telephone solicitation on April 3 2002. The CSD provided Scotts Lawn Service with notice of this complaint on April 16, 2002.

TENN. CODE ANN. § 65-4-405(f) authorizes the TRA to assess penalties for violations of the Tennessee Do-Not-Call statutes, including the issuance of a cease and desist order and the imposition of a civil penalty of up to a maximum of two thousand dollars (\$2,000) for each knowing violation. The maximum fine faced by Scotts Lawn Service in this proceeding is twelve thousand dollars (\$12,000), arising from the five (5) telephone solicitations mentioned above and the act of continuing to conduct telephone solicitations after its registration in the Do-Not-Call Program had expired.

In negotiating this Settlement Agreement, CSD relied upon the factors stated in TENN. CODE ANN. § 65-4-116(b), including the Company's size, financial status, good faith, and the gravity of the violation. Scotts Lawn Service is located in Knoxville, Tennessee with offices in Chattanooga and Johnson City, Tennessee. It employs approximately fifteen (15) persons. After receiving notice of the complaints, Scotts Lawn Service contacted the CSD and expressed an interest in resolving this matter. The CSD has received no additional complaints from Tennessee consumers since April 3, 2002.

In an effort to resolve these complaints, represented by the file numbers above, CSD and Scotts Lawn Service agree to settle this matter based upon the following acknowledgements and terms, subject to approval by the Directors of the TRA:

1. Scotts Lawn Service neither admits nor denies that the five (5) complaints against it are true and valid complaints and that it acted in violation of TENN. CODE ANN. §65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1).

2. After receiving notice of the complaints Scotts Lawn Service contacted CSD and expressed an interest in resolving this matter. In addition, Scotts Lawn Service renewed its registration with the TRA as a telephone solicitor on February 7, 2002 and October 11, 2002 and receives a monthly copy of the Do-Not-Call register.
3. Scotts Lawn Service agrees to pay nine thousand dollars (\$9,000.00) in settlement of these complaints, and agrees to remit the amount of two thousand dollars (\$2,000.00) to the Office of the Chairman of the TRA no later than thirty (30) days after the Directors of the TRA approve this Settlement Agreement.<sup>1</sup> The remaining seven (7) installments of one thousand dollars (\$1,000.00) each shall be remitted to the TRA no later than the first business day of each month for the next seven (7) consecutive months. Upon payment of the amount of nine thousand dollars (\$9,000.00) in compliance with the terms and conditions of this Settlement Agreement, Scotts Lawn Service is excused from further proceedings in this matter.
4. Scotts Lawn Service agrees to comply with all provisions of the Tennessee Do-Not-Call Telephone Sales Solicitation law and regulations.
5. Scotts Lawn Service agrees that a company representative will participate telephonically in the Authority Conference during which the Directors consider this Settlement Agreement.
6. In the event that Scotts Lawn Service fails to comply with the terms and conditions of this Settlement Agreement, the Authority reserves the right to re-open this docket. Scotts Lawn Service shall pay any and all costs incurred in enforcing the Settlement Agreement. Should any subsequent violation of the provisions of paragraph 4 occur,

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<sup>1</sup> The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, referencing TRA Docket No. 02-00326.

such violation shall be treated as a new violation and shall not be cause to re-open this docket.

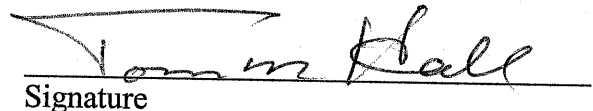
7. If any clause, provision or section of this Settlement Agreement shall, for any reason, is held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause provision or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.
8. This Settlement Agreement represents the entire agreement between the parties, and there are no representation, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Settlement Agreement which are not fully expressed herein or attached hereto.

KNOXVILLE LAWN CARE, INC.  
A/K/A SCOTTS LAWN SERVICE



Eddie Roberson  
Chief, Consumer Services Division  
Tennessee Regulatory Authority

10-24-02  
Date

  
Signature

Tom M. Hall  
Print Name

PROES  
Print Title